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EPA Region 5 Records Ctr.



308990

May 23, 2008

Thomas Turner
Office of Regional Counsel
United States Environmental Protection Agency
219 S. Dearborn St.
Chicago, Illinois 60603
sent by express mail

Re: Glen Ekberg

Dear Tom:

Enclosed with this letter please find the original recorded Environmental Protection Easement and Declaration of Restrictive Covenants dated 3/27/2008.

Very truly yours,

Daniel F. O'Connell

Daniel F. O'Connell
DFO:ls

cc: Glen Ekberg

4-10
4-06

200800824886
Filed for Record in
WINNEBAGO COUNTY IL
KEN STAUF
05-21-2008 At 04:02 PM.
ENVIRONMENT 44.75
State .00
County .00



Prepared: Daniel F. O'Connell
O'Connell Law Office
101 Hamilton St.
Geneva, IL 60134

Return to: Daniel F. O'Connell
O'Connell Law Office
101 Hamilton St.
Geneva, IL 60134

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Easement and Declaration of Restrictive Covenants is made this 22nd day of March, 2008, by and between Amcore Investment Group, N.A, as trustee under Trust No. 73-5734, (the "Grantor"), having an address of 501 Seventh St., Rockford, Illinois and Glen W. Ekberg (the "Grantee"), having an address of 3161 Forest View Road, Rockford, Illinois for and in consideration of TEN DOLLARS, conveys and warrants to the Grantee, Glen Ekberg, the real estate located in the County of Winnebago, State of Illinois, more particularly described on **Appendix 1**, which is attached hereto and made a part hereof (the "Property"), subject to a reservation of and Environmental Easement and Declaration of Restrictive Covenants more particularly described as follows:

WITNESSETH:

WHEREAS, the Grantor holds legal title to certain parcels of real property - designated as Parcel Identification Numbers 16-05-152-002, 16-05-327-006, 16-05-301-003, and 16-05-302-002 - located in the county of Winnebago, State of Illinois, more particularly described on **Appendix 1**, which is attached hereto and made a part hereof (the "Alpine Farm Property"); and

WHEREAS, the Alpine Farm Property is located in the vicinity of Source Area 7 ("Area 7") of the Southeast Rockford Groundwater Contamination Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989, 54 Fed. Reg. 13,296; and

WHEREAS, in a Record of Decision dated June 11, 2002, (the "ROD"), EPA selected a "remedial action" for the Source Control Operable Unit at the Site, which provides, in part, for a remedy combining the in situ technologies of soil vapor extraction, air sparging and multi-phase extraction to work in concert to treat contaminants in unsaturated and saturated soil

and leachate in Area 7; and

WHEREAS, the State of Illinois (the "State"), through the Illinois Environmental Protection Agency ("Illinois EPA"), concurred with the ROD and has taken actions to implement the ROD; and

WHEREAS, a Consent Decree in the case captioned United States v. Glen Ekberg, Case No. 01 C 50457 (N.D. Ill.) (the "Consent Decree"), requires the execution and recordation of this instrument, in order to: (i) grant a permanent right of access over the Property for purposes of implementing, facilitating and monitoring any removal and/or remedial action at the Site; (ii) impose certain permanent water use restrictions for all portions of the Alpine Farm Property, as required in accordance with Consent Decree Subparagraph 12.b, as covenants that will run with the land for purposes of implementing, facilitating and monitoring any removal and/or remedial action at the Site and thereby protecting human health and the environment; and (iii) impose certain permanent land use restrictions for the portion of the Alpine Farm Property that has been designated as the Soil Area of Concern (more particularly described on **Appendix 2**, which is attached hereto and made a part hereof), as required in accordance with Consent Decree Subparagraph 12.b, as covenants that will run with the land for purposes of implementing, facilitating and monitoring any removal and/or remedial action at the Site and thereby protecting human health and the environment.

NOW, THEREFORE:

1. GRANT: Grantor (on its own behalf and on behalf of its successors and assigns), in consideration of the foregoing and the specific agreements hereinafter made by Grantee, does hereby covenant and declare that the Alpine Farm Property shall be subject to the right of access and the restrictions on use set forth below, and does give, grant, and convey to the Grantee, and his heirs, successor, and assigns, with general warranties of title: (i) the perpetual right to enforce said use restrictions, and (ii) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Alpine Farm Property.

2. THIRD PARTY BENEFICIARIES: Grantor (on its own behalf and on behalf of its successors and assigns) and the Grantee (on his own behalf and on behalf of his heirs, successors and assigns) hereby agree that the United States, acting by and through EPA, and its successors and assigns, and the State of Illinois, acting by and through Illinois EPA, and its successors and assigns, shall be Third Party Beneficiaries of all the benefits and rights of the easements, restrictions, covenants, exceptions, notifications, conditions and agreements herein, and that the Third Party Beneficiaries shall have the right to enforce the easements and restrictions described herein.

3. PURPOSE: The purpose of this reservation is to convey to the Grantee real property rights, which will run with the land, to facilitate the remediation of past environmental contamination; to protect human health and the environment by reducing the risk of exposure to contaminants; to provide for the long-term protectiveness of the remedial action; and to accomplish these goals in a manner that allows the redevelopment and beneficial reuse of the Alpine Farm Property to the extent reasonably possible.

4. RESTRICTIONS ON USE: The parties intend that the restrictions and covenants that follow apply to the use of the Alpine Farm Property, run with the land for the benefit of the

Grantee and the Third Party Beneficiaries, and are binding upon: (i) the Grantee and his heirs, successors, and assigns or persons acting under their direction and control; and (ii) any future owners, occupants or other persons acquiring an interest in the Alpine Farm Property and their authorized agents, employees, or persons acting under their direction and control.

a) No interference with remedy: There shall be no interference of any sort, with the construction, operation, maintenance, monitoring, efficacy, or physical integrity of any component, structure, or improvement resulting from or relating to the remedial action on the Alpine Farm Property.

Land uses in the Soil Area of Concern: No action shall be taken that would cause covered waste materials to become exposed in the portion of the Alpine Farm Property designated as the Soil Area of Concern, more particularly described on **Appendix 2**.

b) Ground water uses: No activities shall be conducted on the Alpine Farm Property that extract, consume, or otherwise use any groundwater from the Alpine Farm Property, unless approved by EPA with the Illinois EPA concurrence nor shall any wells be constructed on the Alpine Farm Property for purposes other than ground water monitoring, unless approved by EPA with Illinois EPA concurrence.

d) Effective date of restrictions: The foregoing restrictions on use of the Alpine Farm Property are subject to applicable statutes, ordinances, rules and regulations, and take effect upon the date of execution of this document and remain in effect until both EPA and Illinois EPA issue a written determination to either modify or terminate the conditions and restrictions pursuant to Paragraph 5 below.

5. MODIFICATION OF RESTRICTIONS: The restrictive covenants in the preceding subparagraphs shall continue unless and until EPA, with the concurrence of Illinois EPA, approves the modification or rescission of these restrictive covenants. EPA, with the concurrence of Illinois EPA, may modify or terminate, in whole or in part, the restrictions set forth in subparagraphs 4.a- c in writing, as authorized by law. The owner of a pertinent portion of the Alpine Farm Property may seek to modify or terminate, in whole or in part, the restrictions set forth in subparagraphs 4.a- c by submitting to EPA and Illinois EPA a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification, and any proposed revisions to the environmental easement/restrictive covenants in this instrument. Each application for termination or modification of any restriction set forth in subparagraphs 4.a- c shall include a demonstration by the owner of the pertinent portion of the Alpine Farm Property that the requested termination or modification will not interfere with, impair or reduce: (i) the effectiveness of the remedial action undertaken at the Site; (ii) the long term protectiveness of the remedial action; or (iii) protection of human health and the environment. If EPA, with the concurrence of Illinois EPA, makes a determination that an application satisfies the requirements of this paragraph, including the criteria specified in (i) through (iii), above, EPA will notify the owner of the pertinent portion of the Alpine Farm Property in writing. Any modification of these restrictive covenants shall be recorded with Winnebago County Recorder of Deeds.

6. ENVIRONMENTAL EASEMENT: Grantor hereby grants to the Grantee an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes listed below:

a) Allowing EPA and its designees (including Illinois EPA) to implement the

response actions in the ROD, including but not limited to designing and performing needed pilot tests, and installing, utilizing and maintaining all sampling systems and remediation systems;

b) Allowing EPA and its designees (including Illinois EPA) to verify any data or information submitted to EPA or Illinois EPA;

c) Allowing EPA and its designees (including Illinois EPA) to verify that no action is being taken on the Alpine Farm Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;

d) Allowing EPA and its designees (including Illinois EPA) to monitor response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;

e) Allowing EPA and its designees (including Illinois EPA) to conduct periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and

f) Allowing EPA and its designees (including Illinois EPA) to implement additional or new response actions if EPA, in its sole discretion, determines (i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, (ii) that the additional or new response actions will not impose any significantly greater burden on the Alpine Farm Property or unduly interfere with the then existing uses of the Alpine Farm Property.

7. NO LIMITATION OF RIGHTS OR AUTHORITIES: Nothing in this document shall limit or otherwise affect EPA's or the Illinois EPA's or the Illinois Attorney General's rights of entry and access or EPA's or the Illinois EPA's or the Illinois Attorney General's authority to take response actions under CERCLA, the National Contingency Plan, or other federal or state law.

8. NO PUBLIC ACCESS AND USE: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

9. NOTICE REQUIREMENT FOR TRANSFER OF PROPERTY: Grantee agrees to include in any instrument conveying any interest in any portion of the Property, including, but not limited to deeds, leases and mortgages, a notice in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN ENVIRONMENTAL PROTECTION
EASEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS , DATED _____ , 20__ , RECORDED IN
THE PUBLIC LAND RECORDS ON _____ , 20 IN
BOOK _____ , PAGE _____ , THAT IS ENFORCEABLE BY
THE UNITED STATES OF AMERICA.**

10. ADMINISTRATIVE JURISDICTION: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the U.S. EPA and any successor departments or agencies of the United States. The state agency having

administrative jurisdiction over the interests acquired by the State of Illinois by this instrument is the Illinois EPA and any successor departments or agencies of the State of Illinois.

11. INSPECTION AND ENFORCEMENT: In addition to the access rights set forth in Paragraph 6 and 7 above, the United States and the State of Illinois may enter the Property from time to time for the purposes of performing inspections, overseeing remedy implementation or enforcing the restrictions set forth in subparagraphs 4.a-4c. above. The United States and the State of Illinois as Third Party Beneficiaries shall be entitled to enforce the terms of this instrument in a judicial action seeking specific performance or other applicable remedies at law or in equity. The right to so enforce the conditions and restrictions in this instrument are in addition to any other remedies that may be available, including, but not limited to, remedies under CERCLA. Enforcing the terms of this instrument shall be at the discretion of the United States or the State and any forbearance, delay or omission to exercise their rights under this instrument in the event of a breach of any term of this Agreement shall not be deemed a waiver by the United States or the State of such terms, or any other term, or any rights of the Grantor or Grantee or the Third Party Beneficiaries under this instrument. The easement and covenants shall inure to the benefit of the public in general and the Alpine Farm Property and are enforceable by the United States and the State of Illinois.

12. DAMAGES: The United States and the State shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

13. RESERVATION OF CERTAIN DEFENSES: Nothing in this instrument shall be construed to enlarge the jurisdiction of federal courts or to create subject matter jurisdiction to adjudicate any claims against EPA and the Illinois EPA or otherwise operate as a waiver of any sovereign immunity of the United States and the State of Illinois, and the United States and the State of Illinois expressly reserve all rights and defenses they may have in connection with any action relating to this instrument.

14. WAIVER OF CERTAIN DEFENSES: Grantor hereby waives any defense of laches, estoppel, or prescription.

15. COVENANTS:

a) Grantor and Grantee hereby covenant to and with the United States and its assigns, that the Grantor is lawfully seized in fee simple of the Alpine Farm Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Alpine Farm Property is free and clear of encumbrances, except those noted on **Appendix 3** attached hereto, and that the Grantee will forever warrant and defend the title thereto and the quiet possession thereof.

b) The Grantee (on his own behalf and on behalf of his heirs, successors and assigns), covenants that he will not undertake or allow any activity on or use of the Alpine Farm Property that would violate the land or water use restrictions contained herein.

16. NOTICES: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Amcore Investment Group, N.A.
as trustee under Trust No. 73-5734
501 Seventh St.,
Rockford, Illinois

To Grantee:

Glen Ekberg
3161 Forest View Road
Rockford, IL 61109

With a copy to:

Daniel F. O'Connell
Attorney at Law
O'Connell Law Office
101 Hamilton St.

17. GENERAL PROVISIONS:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by Illinois state law.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their

respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantors", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantors" and their personal representatives, heirs, successors, and assigns. The term "Grantees", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, are "Grantees" and their personal representatives, heirs, successors, and assigns. The rights of the Grantees and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

18. APPENDICES:

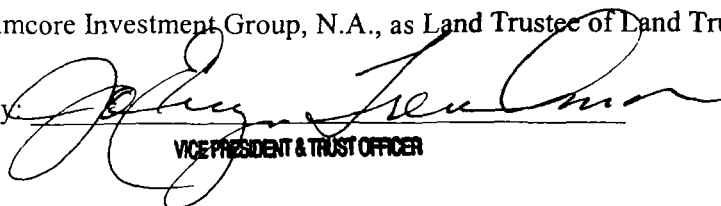
Appendix 1	Legal description of the Alpine Farm Property
Appendix 2	Legal description of the Soil Area of Concern
Appendix 3	Permitted title encumbrances

IN WITNESS WHEREOF, Grantor has caused this Environmental Protection Easement and Declaration of Restrictive Covenants to be signed in its name.

Executed this 27th day of March, 2008

Amcore Investment Group, N.A., as Land Trustee of Land Trust no. No. 73-5734

By:



VICE PRESIDENT & TRUST OFFICER

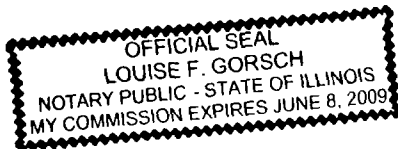
STATE OF ILLINOIS)
) ss
COUNTY OF WINNEBAGO)

On this 27th day of March, 2008, before me, the undersigned, a Notary Public in
and for the State of IL, duly commissioned and sworn, personally appeared Gene NA
known to be the VP & T.O. of Amcove Investment the
corporation that executed the foregoing instrument, and acknowledged the said instrument to be
the free and voluntary act and deed of said corporation, for the uses and purposes therein
mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the
and year written above.

27th day

Louise F. Gorsch



Notary Public in and for the

State of Illinois

My Commission Expires: 6.8.09

APPENDIX 1

That part of the Northwest 1/4 of Section 5 in Township 43 North, Range 2 East of the Third Principal Meridian. Winnebago County, Illinois, lying Southerly of the Illinois Central Railroad right of way; excepting highways.

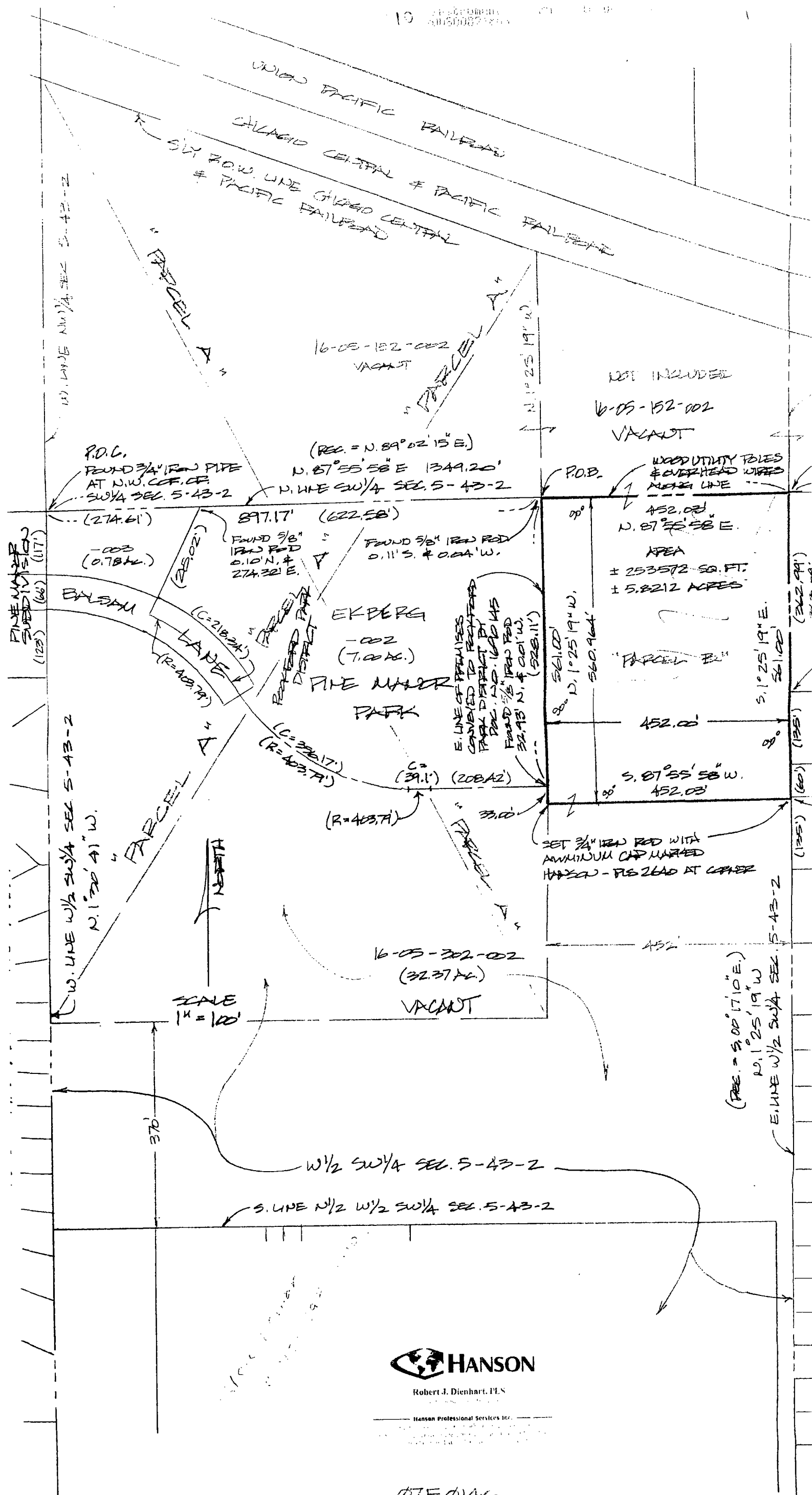
Also part of the east Half (1/2) of the South West Quarter (1/4) of said Section Five (5), Township and Range aforesaid, described as follows, to wit: Beginning at the North East corner of said quarter (1/4) section; thence, South, along the East line of said quarter (1/4) section, twenty-two (22) rods; thence West, parallel with the North line of said quarter (1/4) section to the West line of the East Half (1/2) of the South West Quarter (1/4) of said Section Five (5); thence North along said West line, twenty-two (22) rods to the North line of said quarter (1/4) section; thence East along said North line to the place of beginning; excepting from the last described tract a lane two (2) rods in width across the North side thereof, as same as is described in Warranty Deed from Adelia Barnum et al to Daniel H. Barnum, dated April 1, 1871 and recorded in Book 89 of Deeds, page 496 in said Recorder's Office; excepting the rights granted to Central Illinois Electric and Gas Co., by instrument dated April 25, 1951 and recorded in Book 767 of Recorder's Records, page 16 in said Recorder's Office.

and also,

The North 2 rods of the Northeast Quarter of the Southwest Quarter of Section 5, Township 43 North, Range 2 East of the Third Principal Meridian, excepting there from that part thereof conveyed to the State of Illinois, for the use of the Department of Public Works and Buildings by Warranty Deed dated July 29, 1963 and recorded August 16, 1963 in Book 1406 on Page 61, in Winnebago County, Illinois.

The North Half (1/2) of the West Half (1/2) of the South West Quarter (1/4) of Section Five (5), Township Forth-three (43) North, Range Two (2) East of the Third (3rd) Principal Meridian, excepting the rights of the Central Illinois Electric and Gas Co., over said premises as described in instrument dated April 19, 1951 and recorded in Book 767 of Recorder's Records on page 18 in the Recorder's Office of Winnebago County, Illinois.

Also the East thirty-three (33) feet in width of the South half (1/2) of the West Half (1/2) of the South West Quarter (1/4) of said Section Five (5), township and range aforesaid; excepting the South three hundred (300) feet thereof conveyed by Harry W. Littlejohn and Myrtle I. Littlejohn, his wife, to Union Grange No. S11 by Warranty Deed dated April 16, 1949 and recorded in Book 655 of Recorder's Records on page 458 in said Recorder's Office. Also part of the West Half (1/2) of the South West Quarter (1/4) of said Section Five (5), township and range aforesaid bounded and described as follows, to wit; Beginning at a point in the North line of Sandy Hollow Road two hundred (200) feet West of the East line of said eighty (80) acre tract, and thirty-three (33) feet North of the South line of said section; thence North, parallel with the East line of the West Half (1/2) of the South West Quarter (1/4) of said section two hundred sixty-seven (267) feet; thence East, parallel with the South line of said section, one hundred sixty-seven (167) feet; thence North parallel with the East line of the West Half (1/2) of the South West Quarter (1/4) of said section, thirty-three (33) feet; thence West, parallel with the South line of said section, two hundred (200) feet; thence South parallel with the East line of the West half (1/2) of the South West Quarter (1/4) of said section three hundred (300) feet to the North line of Sandy Hollow Road, thence East along said North line thirty-three (33) feet to the place of Beginning.



“PARCEL A”

THAT PART OF THE NORTHWEST QUARTER AND THAT PART OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 43 NORTH, RANGE 2 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN WINNEBAGO COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 5; THENCE NORTH 87°55'58" EAST BEARINGS ARE BASED ON THE ILLINOIS COORDINATE SYSTEM, WEST ZONE, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 897.17 FEET TO THE NORTHEAST CORNER OF PREMISES CONVEYED TO THE ROCKFORD PARK DISTRICT BY INSTRUMENT RECORDED AS DOCUMENT NUMBER 1690145 FOR THE POINT OF BEGINNING; THENCE SOUTH 01°25'19" EAST, ALONG THE EAST LINE OF SAID PREMISES AND PARALLEL WITH THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 5 TO THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 5; THENCE WESTERLY, ALONG SAID NORTH LINE TO THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 5; THENCE NORTH 01°25'19" WEST, ALONG SAID WEST LINE TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 5; THENCE NORTHERLY, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 5 TO THE SOUTHERLY RIGHT OF WAY LINE OF THE ILLINOIS CENTRAL AND PACIFIC RAILROAD; THENCE SOUTHERLY, ALONG SAID SOUTHERLY LINE TO A POINT THAT IS NORTH 01°25'19" WEST OF THE POINT OF BEGINNING; THENCE SOUTH 01°25'19" EAST, PARALLEL WITH THE EAST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 5 TO THE POINT OF BEGINNING.

WEST LINE OF W 1/2 OF NW 1/4
SEC. 5 - T43 - R2

SET 3/4" IRON ROD WITH ALUMINUM CAP
MARKED "HARDEN PLD 2640" AT CORNER

N. 87°55'58" E. 1349.20'

PT. 16-05-152-002

VACANT

FOUND 5/8" IRON PIPE
0.00' N. & 0.98' W.

